COCHIN LEGISLATIVE COUNCIL PROCEEDINGS

OFFICIAL REPORT OF THE LEGISLATIVE SESSION, 1122

Tuesday, *the* $\frac{\textit{15th April 1947}}{\textit{2nd Medam 1122}}$

The Council met in the Council Hall, Ernakulam, at half-past Eleven of the Clock with the Hon'ble Diwan President (Diwan Bahadur C. P. Karunakara Menon) in the Chair.

Dr. S. S. Rao, Mr. T. V. Kochuvareed, Mrs. Dakshayani Velayudhan, Messrs. S. P. Luiz, and P. Achutha Menon were absent.

1. SWEARING IN OF NEW MEMBERS

The following members were sworn in.—

Rao Sahib A. Madhava Prabhu, Chief Secretary to Government.

Mr. Paul P. Mampilly, Advocate-General.

Mr. M. Sivarama Menon, Constitutional Adviser to Government.

Mr. K. S. Raghavan, Secretary to Government (Finance, etc., Departments).

2. ELECTION OF THE PRESIDENT

Diwan President:—Three valid nominations have been received. The names are: 1. Mr. A. Eachara Menon, proposed by Mr. Jos K. Varghese and seconded by Mr. T. K. L. Kunjuvareed. No. 2. Mr. P. Kumaran Ezhuthassan, proposed by Mr. K. Balakrishna Menon and seconded by Dr. S. S. Rao and No. 3. Mr. L. M. Pylee, proposed by Mr. P. Narayana Menon and seconded by Mr. P. K. Dewer. Mr. Eachara Menon has since withdrawn his candidature for presidentship; therefore, there are only two candidates for presidentship, Mr. P. Kumaran Ezhuthassan and Mr. L. M. Pylee. We will now proceed with the election. Each member will please come and take the ballot paper.

The Voting took place

3. (i) RAISING OF A POINT OF ORDER

***Mr. Parambi Lonappen** *(Irinjalakkuda):* Mr. President, Sir, before the votes are counted, I rise on a point of order that this House is not properly constituted in that we find the two persons Messrs. P. Govinda Menon and V. R. Krishnan Ezhuthassan who have ceased to be members of this Council on account of the findings of the Commissioners appointed to try the election petition No. 1 of 1122, take part in the proceedings of the Council and Messrs. C. R. Iyyunni and P. Govinda Menon are allowed to function as Ministers and take part in the proceedings of the Council. I want a ruling in that matter.

Diwan President: Any other non-official member who wishes to speak?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I argree with the observations made by the Hon'ble Member for Irinjalakkuda in support of the point of order that he has raised. One of the consequences of a finding of guilty of corrupt or illegal practice relating to elections, by a properly constituted election tribunal is that as regards sitting members, over and above their losing their right of franchise,—one of the most fundamental rights of man,—they also lose their membership—their sitting membership. It is so laid down, in Section 16 Clause (f) of the Constitution Act of the Government of Cochin. There is a clause there, Sir, which says that the corrupt or illegal practice which has been declared by the laws of Cochin or British India to be an offence or practice entailing disqualification for being a member. Therefore, a finding of guilty of corrupt practice—major or minor—under part I or II of

*Speech not corrected by the Hon'ble Member.

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Schedule V, entails forfeiture of the sitting membership only if either the laws of Cochin or the laws of British India declare that such corrupt or illegal practice entails disqualification. Therefore, Sir, the question that arises is whether there is any law in Cochin which declares that the finding of guilty of the sort, that the learned tribunal has found against these gentlemen entails forfeiture of the sitting membership.

Now, Sir, there are Sections 14 and 31 in the Constitution Act regarding the rule-making powers of the Diwan and under these Sections 14 and 31, rules have been framed with regard to elections—with regard to corrupt practices—and under another Section of the Constitution Act of Cochin, these rules framed under Section 14 or 31 have the force of law.

One of these rules is No. 5 (2) Electoral Rules which says that a finding of guilty of corrupt practices at elections entails loss of franchise for 5 years in one case, that is when it is under part I and 3 years when committed under part II with a proviso, to be used, not haphazardly and hurriedly as in the instant case, but in very very absolutely necessary cases using the greatest amount of caution and care in the exercise of that power which the Government rightly reserves with them to be exercised appropriately and not as and when they please, or as prayed for by X, Y or Z. That is with regard to franchise.

Now, Sir, I was submitting to this House that the prominent question that arises in connection with the point of order is whether there is a law in Cochin which declares forfeiture of the seat of a sitting member which entails disqualification regarding membership anywhere in the laws of Cochin. That question is pertinently, pointedly and definitely answered in a learned judgment of our Hon'ble High court reported in 34 Cochin, I believe, at pages 893, 901 and 902, in paragraph 10 of the report. There the learned Judge very succinctly, pointedly and definitely has answered that question, Sir, which was posed like this. The learned Advocate appearing for the appellant—Mr. V. P. Kannu Pillai—in the case Mr. V. P. Kannu Pillai *versus* the Secretary to Government of Cochin of those days—there the learned Advocate appearing for the appellant raised the question that there is no law in Cochin which thus far has declared the forfeiture of a seat as a result of finding of guilty of corrupt practises by an Election Court with regard to a sitting member. That argument has been disposed of by the eminent judge who took part in that decision. Happily, he is amongst us today. The argument of the learned Advocate for the appellant, said the learned Judge, is obviously fallacious—fallacious are the words used in that judgment. Another ingenious argument of that learned Advocate was that Electoral Rule 5 (2) to which I made reference entails only forfeiture of rights of franchise and not of membership and, that argument is answered by the same judge in the same paragraph observing what entails forfeiture of franchise or the right to exercise a vote,—*a fortiore* entails forfeiture of candidature or membership. If it entails forfeiture of candidature necessarily therefore, Sir, it entails forfeiture of membership. So, in the face of these definite, learned, clear, unequivocal words used in the judgment by our own Hon'ble High Court composed of eminent judges of those days, in the face of that, to say that there is no law in Cochin, there is no declared law of Cochin which entails forfeiture of membership of a sitting member who has been found guilty rightly and deservedly, and not with prejudice or with malice as is now attempted to be paraded in the streets of Cochin is to shut ones eyes to realities. Whatever be the reason behind it—it may even be prejudiced—still if there is a finding of guilty by a properly constituted tribunal, this decision lays down in unequivocal terms that it entails forfeiture of the of a sitting member who unfortunately has been found guilty, deservedly or otherwise. The reason behind the finding is quite immaterial. The question is and the only question is, whether there is a finding of guilty by a competent tribunal with or without a dissenting note by one of the Commissioners, originally made or not, not subsequently made, subsequently got, for what reasons and by whom and under what circumstances, God alone knows. I know it. But I do not want to disclose it just now. On this point, Sir, I had sent up a question sufficiently early with a request that that question may be kindly answered, so that according to the nature of the answers hereto I might decide to move or not to move a motion of a more important nature which again affects the constitution of this House as it sits today. Sir, that question being not answered today as seen form the book of questions and answers I cannot use the information for the purpose on hand. I now make the assertion that if there is any such finding of guilty right or wrong, prejudiced or dictated and also whatever be the reason behind the finding nothing else is to be considered. To the question whether there is a finding of guilty, if the answer is in the affirmative it entails forfeiture.

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Act XIV recently published in the Gazette will not save the situation. It is my humble opinion and I am sure I will be supported by the authority of eminent lawyers whose names have been paraded to their discredit. Their expert opinion and all was sought and obtained and they too have been public property before the decision of the tribunal was published. What I say, Sir, is that equally eminent legal luminaries have opined and there is in my possession such opinion that in the face of that unoverruled decision referred to by me in 34 Cochin on page 902, in the face of that, so long as it is there, Act XIV is ultra vires and what is ultra vires, cannot save anybody whether he be Minister, whether he be editor, whether he be a simple voter or whether he be the greatest son of Cochin (daughter included) (*Laughter.*) Whatever be their position in life, Sir, so long as the decision stands not overruled, so long as it is not overruled, by the same High Court or an enactment has been passed through this House or through a Proclamation expressly referring to the earlier decision which has necessitated the passing of such an Act or promulgating a Proclamation, the earlier decision holds the field and sitting membership stands forfeited. The point of order raised has to be upheld if the dignity of this House, has to be maintained and if the respect and binding character of a ruling of the High Court is to be continued. That, Sir, is the very first thing to be done by the speaker of the House namely, whether the House is properly constituted or not. Before that item No. 1 on the Order paper cannot be looked into, and therefore, Sir, although the point of order raised only suggests that these guntlemen mentioned by the Hon'ble Member for Irinjalakkuda should not take part in the proceedings. I put it on a higher ground and say that these three gentlemen should be advised to remove themselves from the House, failing which, provisions of the Constitution Act of Cochin in this connection namely removal through a Sergeant should be resorted to. I believe there is no Sergeant here but a substitute is here and he will do the job. Before I sit down let me say, Sir, it is not done with anything other than the desire to establish conventions and practices followed in other institutions. I solicit these conventions may be followed, may be respected in this House which in many respects is on a par with those great institutions. If the point of order is upheld, as it ought to be upheld, that will be followed by the free voluntary walking out of the three individuals one of whom happens to be my son-in-law Mr. V. R. Krishnan Ezhuthassan, the young boy—exeuse me for calling him boy—the young man, who is the editor of the organ of the leading Section of Ministerialist jumble, and the other gentleman referred to being esteemed friends of mine, co-workers with me from about 1110 along with the other Hon'ble friend of mine, the Hon'ble Minister for Public Health. That certainly is not a sight that I can look on with pleasure. But it is inevitable and has to be endured. It is only the desire to see that this House is a respectful House trying to establish conventions, trying to establish healthy practices, trying to respect our own laws, trying to respect the decisions of our own Hon'ble High Court it is only in that spirit and nothing else that has induced me, Sir, with your permission on your invitation, generally extended to the House, that I contributed my humble share on the point of order raised which I am sure will be ruled correctly, correctly as becomes the decisions given by eminent speakers of bigger Legislative bodies. And with that hope, Sir, I sit down.

Diwan President: I would like to hear what the Government have to say about it.

Mr. M. Sivarama Menon *(Constitutional Adviser):* The point of order raised by the Hon'ble Member for Irinjalakkuda is that this House is not properly constituted. He based his objection on the ground that two Hon'ble Members of this House are disqualified from continuing to be Members of this House on account of the Report made by the Election Commissioners that they have committed corrupt practices within the meaning of the Cochin Legislative Council Electoral Rules. This ground is not one that really affects the constitution of the House in the sense in which that word is ordinarily understood. It has been stated at page 235 of May's Parliamentary Practice, 14th Edition, that "it is the duty of the Speaker to see that the House is properly constituted before it proceeds to business." The author then refers the reader to page 311 of his book, where it is stated that "at the meeting of the House it is the duty of the Speaker to ascertain whether a quorum is present; but when he has taken the chair, that responsibility rests upon the House. Accordingly the only occasion when the Speaker takes the initiative in this matter is immediately after prayers. At that moment, if the necessity should arise, the Speaker refrains from taking the chair and, standing in the place which the Clerk of the House occupies at the table, counts the House. The Speaker announces that the House is made by taking the chair, if he ascertains that forty members are present; but if that is not the case, he waits, seated in the Clerk's chair, or retires from the House, either

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until a quorum is present, or until four O'clock, when, standing on the upper step of the chair, he again counts the House; and, if a quorum is not present when he has ceased counting, he adjourns the House, without question put, until the next day of sitting." It is clear from these observations that the term "properly constituted" has not been intended to denote the question as to whether any sitting Member of the House is disqualified or not. That is a different question which under the custom and practice obtaining in England, the House of Commons is competent to decide. Privileges of the House of Commons are in England an important part of the law and custom of parliament. They concern the relations of both the Houses with the King, the courts, the public and with one another. Privilege is part of the Common Law and therefore neither House can create any new privilege but must justify its claim on the authority of Parliament. In days of old the House of Commons in England had even the right to determine questions of disputed elections but in 1868 this duty was entrusted to the Courts by the Parliament. The House of Commons still possesses the right to decide upon legal disqualifications for membership and to declare a seat vacant on that ground. It may also refer such a question to the Courts. It cannot be argued from the fact that the House of Commons possesses this power to pronounce upon legal disqualifications for membership, that this House also by analogy must be deemed to have that power. I have already said that the Speaker of the House of Commons does not possess any such power. Further under sub-section (2) of section 22 of the Government of Cochin Act, it has been laid down that "the privileges of members and other persons entitled to take part in the proceedings of the Council shall be such, as may from time to time, be defined by Act of the Legislature". It is therefore clear that the custom, practice or the Common Law of England regarding the privileges of the House of Commons cannot be argued to be applicable to the powers exercisable by this House when the Legislature has provided that they shall from time to time be defined by Act of the Legislature. Except the privileges mentioned in sub-section (1) of sectien 22, other privileges have therefore to be prescribed by Act of the Legislature. The Cochin Legislature has not yet enacted that this House is competent to pronounce upon the disqualifications, if any, incurred by sitting members and declare their seats to be vacant. In this state of the law neither you, Sir, President, nor this House can decide upon the question raised in the abstract form by the Hon'ble Member for Irinjalakkuda regarding the disqualification of the two Hon'ble Members named by him.

The question raised by the Hon'ble Member for Irinjalakkuda will however, be relevant to a limited extent in the matter of the election of the non-official President which duty has been ordained to be carried out by the Diwan under the amended section 19 of the Government of Cochin Act. The proviso to sub-section (3) of that section lays down that the election of the president has to be conducted by the Diwan or such member of the Council as the Diwan may appoint in this behalf. Therefore, Sir, the question whether the two members named by the Hon'ble Member for Irinjalakkuda are entitled to take part in the election of the President or in short whether the votes tendered by them can be counted at all for this purpose may have to be decided by the Diwan who now occupies the Chair to enable him to perform the duties pertaining to the conduct of the presidential election. It may after all be that two votes by themselves may not materially affect the result of the election. I therefore do not venture to suggest that the Diwan who is now presiding over this House to carry out the duties imposed upon him by the proviso to sub-section (3) of section 19 is not competent to decide the question raised in the point of order for the exclusive purpose of deciding whether the votes of the two Hon'ble Members can be taken into account in determining which of the candidates secures the largest number of votes. I also wish to avail myself of this opportunity to explain the position of Government in regard to a misunderstanding which prevails in some minds regarding the operative effect of section 16 (1) (f) of the Government of Cochin Act.

I need hardly remind the House that the provisions of the Government of Co hin Act cannot in any manner yield to the rules framed under that Act if the rules go beyond the provisions of the Act or are inconsistent with any of those provisions. The rules cannot govern the Statute but the Statute must govern the rules. Section 16 of the Government of Cochin Act is the only section which lays down disqualifications for being chosen as and for being a member of the Legislative Council. Section 16 (1) (f) as it stood on the date of the report of the Commissioners runs thus:—

"A person shall be disqualified for being chosen as and for being a member of the Legislative Council.—

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if he has been convicted, or has, in proceedings for questioning the validity or regularity of an election been found to have been guilty of any offence or corrupt or illegal practice relating to elections which has been declared by the laws of Cochin or of British India to be an offence or practice entailing disqua ification for membership of the Council, unless such period has elapsed as may be specified in that behalf by the provisions of such laws".

A plain reading of this section will show that there are two pre-requisites to be satisfied before the section can become operative. The first is that there must be a declaration by the laws of Cochin or of British India that such and such corrupt practices entail disqualification for membership of the Council. The second is that the period during which the disqualification is to operate must be specified by the provisions of such a law. Government hold the view that these two pre-requisites have not been satisfied by the Legislature as yet. No Law of Cochin has declared that any of the corrupt practices mentioned in Schedule V will entail disqualification for membership of the Council. Obviously therefore the period of the disqualification has also not been specified. When I use the term 'disqualification for membership of the Council' it should not be confused or misunderstood with the disqualification for the exercise of the electoral right of a person. To put it more clearly, the right to be a voter and the right to be chosen as and for being a member of the Council are entirely two different rights and they have been differently dealt with by the Legislature. In the sense in which section 16 (1) (f) has been enacted, a declaratory law must necessarily specify the corrupt practices which will entail disqualification for membership. The corrupt practices under the electoral rules are of several kinds. Some are serious while others are less serious It is not necessary that all corrupt practices should entail disqualification for membership. It is left to the discretion of the Legislature to choose and specify corrupt practices which entail such a disqualification. This is an imperative duty of the Legislature under the terms of section 16 (1) (f) of the Government of Cochin Act. A person who at the time of the preparation of the voter's list was qualified to have his name entered therein on the sole qualification that he was then a tax-payer and had his name entered on the electoral roll on the basis of that qualification may be returned as a member of this House at an election. The life of the Council has been statutorily fixed to be three years. If after the election this member assigns away all the properties he had after he was returned as a member and loses the qualification for being a voter, can you say that that member must ipso facto cease to be a member of this House even though the full term of the Council has not run out? To bring home the illustration clearer to you, may I ask Hon'ble Members of this House whether the Hon'ble Member for Jenmies, Mr. Chelur Nambudiri, should go out of th's House if he has parted away with all his enormous properties before the sitting of this meeting began. The argument that one will cease to be a member of the Council by the fact that one loses his right to be a voter (Electoral right) can hold good only if section 16 of the Government of Cochin Act had stated that loss of electoral right is a disqualification for continuance of the membership of the Council as in the case of supervening disqualifications like acceptance of Government appointment, declaration by a competent court of unsoundness of mind or any other like disqualification falling within the terms of section 16.

The distinction between the right to be a voter and the right to be a member has therefore to be clearly kept in mind before you try to interpret section 16 (1) (f). The Government of Cochin Act has closely followed several of the provisions of the Government of India Act, 1935. Section 16 (1) (f) of our Act is analogous to section 69 (1) (d) of the Government of India Act 1935. It runs thus.—

"A person shall be disqualified for being chosen as, and for being member of a Provincial Legislative Assembly or Legislative Council—

if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice, relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act."

In pursuance to this sub-section "The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order 1936" has been issued since it is the duty of the Legislature to declare the corrupt practices which entail disqualification for membership

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of the Council and to specify the periods for which such disqualification is to operate Part IV, paragraph 1, of this Order states as follows.—

"The offences and practices specified in relation to certain elections, in the Second Schedule to this Order shall, for the periods respectively specified in relation to those offences and practices in that Schedule, entail disqualification for membership of any Provincial Legislature."

The corrupt practices are set out in the First Schedule and the Second Schedule specifies the corrupt practices which entail disqualification for membership of the Legislature and the period of the disqualification. The periods range from 4 years to 6 years. Use of public conveyance for the purpose of carrying voters is not declared by the British Indian Legislature to be a practice entailing disqualification for membership. The provisions of this Order make it clear beyond doubt what is meant by the declaration required under section 16 (1) (f) which is closely analogous to section 69 (1) (d) of the Government of India Act.

There may be one ingenious argument that can be availed of to show that disqualification for membership will be incurred in Cochin if there is a declaration under the laws of British India regarding corrupt practices obtaining in Britiah India. The foundation of this argument rests upon the use of the phraseology "declared by the laws of Cochin or of British India" occurring in the original section 16 (1) (f). I do not for a moment believe that these words signify a wholesale adoption of the British Indian law on the subject of disqualification for membership.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* We have understood the scope of it.

Mr. M. Sivarama Menon *(Constitutional Adviser):* I have understood it correctly. The difference is that I look at it from a different and dispassionate point of view.

If there is a declaration by the laws of Cochin and of British India, I put it to you which is the law that is to apply in Cochin if there is a conflict between the two laws? I am not aware of any reciprocity having been arranged in this respect. I cannot also imagine that the Cochin Legislature has abdicated its functions in this respect, for if that were so the reference to the laws of Cochin in the Section is meaningless. Further the term 'entailing disqualification for membership of the Council' appearing in the section can only relate to the Cochin Legislative Council. It is a self-evident proposition that the British Indian Legislature has no jurisdiction to legislate for Cochin. This is a conclusive argument to show that the term 'British India' occurring in the section was never intended to be a reference to the British Indian Order-in-Council or any other law of British India on the subject. The wording of the original section 16 (1) (f) is therefore anomalous. The reference to British India was necessitated by the fact that under section 16 (1) (c) it is only a subject of His Highness or of British India who is qualified to be a member of the Legislative Council. A British Indian subject who has committed a corrupt practice relating to an election in British India cannot obviously be permitted to be a member of the Cochin Legislative Council. For this purpose the term 'British India' happened to be used in section 16 (1) (f). But the language of the section allows itself to an unconvincing and unreasonable interpretation. In fact it does not carry out the real intent of the Legislature and for want of a declaration by the laws of Cochin of the corrupt pratcices which entail disqualification for membership, section 16 (1) (f) remains innocuous in the Statute.

Government are fully aware of the fact that in 34 Cochin 893 it has been decided by one of the learned judges who took part in the decision that rule 5 of the Cochin Legislative Council Electoral Rules must be deemed to be a declaration by the Cochin Legislature to satisfy the requirements of section 16 (1) (f) of the Government of Cochin Act as it prohibits the inclsuion of the name of a voter who has been reported guilty of a corrupt practice. It also directs the removal of the name of the voter whose name is on the electoral roll when he is reported guilty of a corrupt practice. Impliedly it is then argued that it is only a voter whose name is on the roll that will be able to stand as a candidate and that when his name is not on the electoral roll he will not be able to stand as a candidate. This is perfectly true. But this does not mean that the direction not to include the name of a person in the electoral roll is tantamount to a declaration entailing disquaification for membership under section 16 (1) (f). Rule 5 has nothing to do with disqualifications for membership of the Council. Further, when a candidate is returned at an election he is entitled to continue his membership for the term of that Council even if in the meanwhile he loses his electoral right. Therefore, the point that the name of a voter found guilty of a corrupt practice will be deemed to be not on the electoral roll can have

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an indirect effect in the matter of disabling him from standing for election as a candidate only when the next elections come or when there is a bye-election in his very constituency. In 34 Cochin 893 it was a case where Mr. V. P. Kannu Pillai was first returned as a member. Then there was an election petition which resulted in the election being set aside on his being found guilty of a corrupt practice. There was then the second election in the same constituency at which also Mr. V. P. Kannu Pillai stood as a candidate. This also was questioned by another election petition and the rival candidate was declared duly elected on the ground that Mr. Kannu Pillai had incurred a disqualification. It is beyond dispute on the facts of that case that Mr. V. P. Kannu Pillai's name should have been either removed from the electoral roll as required by rule 5 or if not so removed must be deemed to have been removed from the rolls. In such a contingency at the time of the second election Mr. Kannu Pillai was not a voter and he could not therefore stand as a candidate not because he has incurred a disqualification under section 16 (1) (f) but ecause his name in law was not on the electoral roll. This result is totally different from saying that he had incurred disqualification under section 16 (1) (f) in the absence of a declaration by the laws of Cochin declared under the said section. Else section 16 would have provided that loss of electoral right *ipso facto* entails disqualification for membership of the Council.

The rule-making powers vested in Government under sections 14 and 31 do not warrant the laying down of disqualifications for membership of the Council through the medium of the rules as section 16 of the Act itself has enumarated the disqualifications for membership. The ambit of that section cannot be limited or enlarged. It is not therefore correct to say that rule 5 satisfies the requirements of section 16 (1) (f). In view of this definite opinion formed by Government and the contrary view, expressed by one of the learned judges in 34 Cochin 893, Government have, for the removal of all doubts, amended by Act XIV of 1122 section 16 (1) (f) so that real intent of the Legislature may be achieved.

It has been pointed out by the Hon'ble Member for Vadakkancheri that so long as the decision in 34 Cochin stands and that so long as it has not been over-ruled by a Full Bench decision, any Act of the Legislature disturbing the law as laid down therein is *ultra vires* This is the first time I hear that His Higness in exercise of the powers vested in Him under section 56 of the Government of Cochin Act cannot change the law or that after the pronouncement of a decision the Legislature cannot change the law but must leave it to the Court itself to change the law by a different pronouncement. I believe my learned friend did not mean this.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Certainly not.

Mr. M. Sivarama Menon *(Constitutional Adviser):* Now you are realising the position correctly. A decision of the highest court in the land on a particular point of law need not govern that law in perpetuity if the Legislature choose to amend the law. The court will then have to administer the amended law as the function of the Court is not to make laws but to administer and govern the laws enacted by the Legislature. I therefore confess my inability to accept the meaning of the argument that Act XIV of 1122 is ultra vires of the authority responsible for its enactment.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* That is the shelter.

Mr. M. Sivarama Menon *(Constituitonal Adviser):* Yes. That is the last shelter for each one of us. It is that shelter which gives nourishment to justice in the growth of times and it is that shelter we must resort to in times when other shelters fail to give adequate protection. That is a shelter which is supreme and which will never fail you when justice demands it.

The proviso to rule 5 (2) empowers Government to order the retention of the name of a person in the voter's list in spite of the Commissioners reporting that such person has been found guilty of a corrupt practice. This relates only to the electoral right of a person and it does not touch the question of disqualification for membership. There is no appeal provided from a report of this nature and the Legislature has thought it fit to empower Government to order the inclusion of the name in the voter's list after considering the facts and circumstances of each particular case. This is a discretion which has been vested in Government under the rule and by acting under it Government have not arrogated to themselves any power which they did not possess. Nor did they take power to issue an order of exemption. Government have only acted under the existing law for reasons which in their judgment were quite adequate to justify the action. Are you really up in arms against that rule which has

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been in existence for such a long time unquestioned by this House? If on any particular occasion the existence of that rule is found to be an obstacle in the race for..... (inaudible) I can only say that the Legislature should have interfered earlier to change the law. If two reasonable views are possible on a particular set of facts you cannot blame the person who takes a different view from the other. It is a matter of opinion. The election tribunal, although it has the powers of a Court for certain specific purposes, is not a court in the sense that the Court of a Munsiff or a Magistrate or any other superior Court is. It is more or less an administrative tribunal enjoying certain powers of courts for certain purposes. That is why their conclusions on the matters in dispute are couched in the form of a report and not a definitive judgment. They have no power to enforce their report as in the case of a judgment or decree of a court of law.

There was a veiled suggestion by the Hon'ble Member for Vadakkancheri that he cannot tolerate the presence of members who have been reported guilty of corrupt practices by the Commissioners and he was gazing for a sergeant to achieve his purpose. The House of Commons has even got a right to commit a member to prison and courts of law cannot question such action if the reasons for the committal are not stated. Does this House possess the power to commit anybody for contempt or to prison for that purpose?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Better we have.

Mr. M. Sivarama Menon *(Constitutional Adviser):* God forbid that that day may not be our doomsday!

This House is not entitled to exercise any judicial or police power. Sub-section (3) of section 22 of the Government of Cochin Act expressly prohibits this House from exercising any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or Standing Orders or otherwise behaving in a disorderly manner.

Diwan President: I do not think that we need dilate on that point.

Mr. M. Sivarama Menon *(Constitutional Adviser):* Then, Sir, I conclude by saying that section 16 (1) (f) of the Government of Cochin Act as it originally stood in the Statute Book was not operative to entail any disqualification for membership of the Council in the case of any member of the Council, that rule 5 (2) relates only to electoral right, that rule 5 (2) cannot be deemed to be a declaration required by section 16 (1) (f), that the ambiguity and confusion in the law has been remedied by replacing the old section 16 (1) (f) by the Amended Act XIV of 1122 and that therefore the point of order raised by the Hon'ble Member for Irinjalakkuda has no force behind it and that the members named by him have not incurred any disqualification for membership of the Council and that they are entitled to cast votes in the election of the President and that their votes are liable to be duly counted.

Mr. K. Balakrishna Menon *(Cheruthuruthi):* Will the other members get a chance to speak?

Diwan President: One of you can and you should be brief.

Mr. K. Balakrishna Menon *(Cheruthuruthi):* From the speech of the Constitutional Adviser, Sir, I was able to understand two things; one is that the two members in regard to whom the point of order has been raised here are perfectly competent to take part in the deliberations of this House and the other point is the sort of justification for the action taken by Government in issuing a proclamation. The latter part of the question in my humble opinion is not germane to the issue. We are only concerned here with the first part of the question. In regard to that let me at the outset submit that when members who belong to the legal profession and who also claim to know something about law cannot subscribe to the view of the learned Constitutional Adviser when he says that it is within the province of the Government to interpret the law. The law as it stood before the royal proclamation has been intrepreted by the High Court of Cochin and that interpretation amounted to this, that a forfeiture of the right of franchise must co-extensively entail the forfeiture of membership of the Council. That law was good. Looked at from the point of view of the Constitutional Adviser I would contend that the present royal proclamation is nothing but an implementation of the interpretation given by the then High Court of Cochin. The point therefore is if the law at the time when the Commissioners submitted their report was as interpreted by the High Court of Cochin, it means that immediately on the submission of the report they have *ipso facto* ceased to become members of the Legislative Council. Looked at from that point of view I would further contend by taking the House one step further, that the present royal

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proclamation is not going to affect them for a simple reason that the mischief had already been done and the present proclamation had not been issued to cover that mischief. To us it appears that the position taken by Government from a dispassionate point of view is wrong. I do not know whether you will be doing the right thing in allowing to do it for the simple reason, but at the same time I would like to say a few words in as much as it has been pressed by the Constitutional Adviser. I ask if it has been laid down by the Constitutional Act of Cochin that immediately after the submission of the report, it should be published in the Cochin Government Gazette? Why it was not published especially when the people wanted to know the reasons arrived at by the Commissioners? We were not given a chance. Immediately came out the Extraordinary Gazette relieving Mr. P. Govinda Menon from the disqualification, and at the same time making absolutely no mention of Mr. V. R. Krishnan Ezhuthassan of whom the Commissioners had definitely and deliberately stated that no instance of a more pernicious and more harmful corrupt practice during the period of election had been committed in the annals of the election campaign.

Mr. P. Kumaran Ezhuhassan *(Vadakkancheri):* It was because he was a Minister and that Minister forgot all about his co-culprit.

Mr. K. Balakrishna Menon *(Cheruthuruthi):* That seems to be the only reason. How is it that they took time to give publicity to the statement of the report of the Commissioners and even stated in the press communique that in regard to Mr. P. Govinda Menon they came to know about the dissenting minute of Mr. M. S. Menon only subsequent to the issue of the Gazette Extra-ordinary. I ask when this dissenting minute was made? We find from an interview granted by the President of the Tribunal, Mr. R. P. Venkitakrishna Ayyar that there was unanimity on the report, there was absolutely no difference of opinion. I need hardly dilate much more on this subject. I have finished.

***Mr. Parambi Lonappen** *(Irinjalakkuda):* I don't wish to say much again regarding this matter since it has been well expressed by Messrs. Ezhuthassan and Balakrishna Menon, but I am sure of one thing. There is absolutely no provision whatever in the Constitution Act of 1113 to revise or review the findings of the Commissioners appointed by the Government nor do I find any rule in the sections in the Constitution Act that there is any scope for appeal. What the section clearly says is this—that the decision of the Election Commissioners shall be published in the Gazette and in accordance with the report thereof, and that the opinion of the majority of the Commissioners shall prevail. It is intended by that Sir, that the public is not expected to know what the inner discussions of the Commissioners were with regard to these election offences and therefore the Legislature has deliberately stated in Section 38 that the majority opinion of the Commissioners shall prevail, and that there is no scope whatever for a difference in the sudmission of the report. There is also, I submit, absolutely no scope for the Government to review or to revise the Commissioners' report. Whatever may be, as has been said by Mr. Kumaran Ezhuthassan the findings of the Commissioners whether right or wrong it has been found from the Gazette Extra-ordinary issued by the Government 3 days after the submission of the Commissioners' report that they almost agree with the findings of the Commissioners and say that Mr. Govinda Menon has entaitled disqualification on accout of the fact that he was guilty of a corrupt practice. Is it not an admission on the part of the Government that you accept the law of the State and issue an Extra-ordinary Gazette to show that you are not going to give effect to the findings of the Commissioners? And now that has been done, where is the use for the Government to say that there is no law in the State to say that Mr. Govinda Menon or Mr. Krishnan Ezhuthassan has incurred the penalty of corrupt practices. While, Sir, I find from from press reports and also from the press communique issued by the Government that they had been wandering and labouring to collect information and evidence from extraneous persons.

Mr. M. Sivarama Menon *(Constitutional Adviser):* Who, please? I rebut it.

Mr. Parambi Lonappen *(Irinjalakkuda):* I find that they had been trying to collect extraneous information after the Commissioners ceased to function to show that there was difference of opinion. There is no scope for the Government to go about labouring and wandering to collect evidence. If there is any doubt about this, they must go to the High Court and ask for their opinion and not wander about in the streets of Cochin to find out what the law is. Whatever be the opinion of the Constitutional Adviser, and however vehement may be his arguments here, if you thought that the proposals of the Commissioners were incorrect,

*Speech not corrected by the Hon'ble Member.

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[Mr. Parambi Lonappen]

the proper authority for you to go to and ask for advice is the High Court. You failed to do that. Now you say that this House is properly constituted because these two gentlemen have not entailed any disqualification from corrupt practice. The section clearly says, Sir, that if any person is convicted of any offence under Chapter VIII A of the Cochin Penal Code or Chapter IX of the Indian Penal Code by the Commissioners appointed under any rules in force regarding elections in the Legislative Council constituted under the Act reported to be a corrupt practice specified in Part I, his name if on the electoral rolls shall be removed there from and shall not be registered. What did the Government do in pursuance of this strict injunction in the Act? But what the Gazette Extra-ordinary stated was that his name shall not be removed. Is that the way to abide by the decisions of a legally constituted Tribunal which you yourself appointed? Since the promulgation of the Constitution Act though several tribunals have been appointed to enquire into election petitions not one of such decisions has been objected to by the Government. I am sure my friend Mr. Madhava Prabhu who was the President of one of such Election Courts knows about it. I too was one such President. Why this objection in this case alone? Why not law take its own course whether the person involved is a Minister or not? Well Sir, if you go out of your way against the declared rules of Government where is the safety of the individual. We don't want matters to be dictated to by parties in power or position. I submit that this House is not properly constituted as two persons who have ipso facto ceased to be members of this Council are taking part in the proceedings of this Council. Again under Section 2 of the Government of Cochin Act the two persons have been appointed Ministers. The dignified position of elected members, at least of one of them, has been lost, and yet Government take shelter under the Act and say that he can sit there and take part in the proceedings in the Council as a Minister! Disgraceful! If he has decorum he ought to have left. He is, according to Section 62, initially appointed by His Highness. He cannot take shelter under the Act and continue as Minister because there is some round about provision in the Act by which a non-elected member can be a Minister and yet from another aspect Sir, is it not the electorate of this State to decide this. With all the paraphernalia of his office and authority is it fair to impose upon the electorates of Nellayi where he could go with the authority of a Minister and ask for their votes? Are you giving a fair, unfettered election free unfettered election? It is the right of the Government to give us a free and unfettered election and a good election fight?

(A voice—are the voters afraid of the Minister)

I have made my position clear that the point of order raised by me is perfectly correct. I submit that the three persons mentioned already are not properly members of this House. At least two of them cannot continue as Ministers.

Mr. M. Sivarama Menon *(Constitutional Adviser):* In fairness to the Hon'ble Members of the other side I think it shall be doing harm if we answer this question as it is based, on incorrect information. In reply to the question whether any information was conveyed to the President, in fact, I may tell him that there was a letter addressed to the President included as one of the appendices sent by his own clerk.

Diwan President: I have heard the arguments on both sides and I have come to the conclusion that according to the rules as they stand at present the two members referred to in the point of order can continue to be members of this House.

3. (ii) RAISING OF A POINT OF ORDER

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I rise to another point of order. Before we proceed to count the votes the five Hon'ble Members of this House trusted servants of the Government of Cochin in the person of the Chief Secretary to Government, the Advocate General, the Constitutional Adviser to the Government of Cochin, the Finance member to the Government of Cochin and the Secretary to Government should be allowed to vote in this election. These trusted servants of the Government have been denied their fundamental right to decide as to who should be the person to sit in that chair which is the second highest in the State being next only to the Throne. I hope I am right Sir. When I say this. I am making an assertion that it is not a free voluntary decision.

That it is decision of theirs that these 5 Government members, Hon'ble Members of this House have not taken part in this greatest achievement of the Government of Cochin on the prompting, on the urgings, on the demands made on them by this House that they be given the right to elect their own President in contradistinction to having a Diwan President, who after all

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